

STATE OF NEW YORK
SUPREME COURT

COUNTY OF MONTGOMERY

JOSEPH BIASI, individually and on behalf
of all others similarly situated,

Plaintiffs,

- against -

WAL-MART STORES, INC., EARLENE
SCHAEFFER, RYAN DUNPHY and REBECCA
PAUKSTELA,

Defendants.

EXAMINATION BEFORE TRIAL of one of the
Defendants, RYAN DUNPHY, held on Friday, August 12,
2016 at the offices of E. Stewart Jones Hacker
Murphy, LLP, 28 Second Street, Troy, New York,
commencing at 9:00 a.m; before DOROTHEA MULLEN, a
Shorthand Reporter and Notary Public in and for the
State of New York.

APPEARANCES:

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STIPULATIONS

It is hereby stipulated and agreed by and among the attorneys for the respective parties hereto that all rights provided by the C.P.L.R., and Part 221 of the Uniform Rules for the Conduct of Depositions, including the right to object to any testimony at this examination is reserved; and in addition, the failure to object to any question or to move to strike any testimony at this examination shall not be a bar or waiver to make such motion at, and is reserved to, the trial of this action.

This deposition may be sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this examination was begun, but the failure to do so or to return the original of this deposition to counsel, shall not be deemed a waiver of the rights provided by Rule 3116 of the C.P.L.R., and shall be controlled thereby.

The filing of the original of this deposition is waived.

It is further stipulated, that a copy of this examination shall be furnished to the attorney for the witness being examined without charge.

* * * * *

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(Ryan Dunphy)

1 RYAN DUNPHY,
2 called herein as a witness, having been first
3 duly sworn by the Notary Public, was examined
4 and testified as follows:

5 BY MR. FINN:

6 Q Good morning, Mr. Dunphy. My name is Ryan
7 Finn. I represent the Plaintiff, Joseph Biasi, in
8 an action brought against Wal-Mart and several
9 individuals, yourself included.

10 This morning we will be conducting a
11 deposition. I know that you had the chance to sit
12 through my client's deposition, so I assume you have
13 some familiarity with the process.

14 Really the most important ground rule is
15 that if you don't understand my question, just let
16 me know so we can have a clear record of my question
17 and your answer.

18 The other ground rule that is also very
19 important is that we don't speak at the same time so
20 the court reporter can get everything down; okay?

21 A Okay.

22 Q What is your current job?

23 A I am a food co-manager for the Glenville

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(Ryan Dunphy)

1 Wal-Mart.

2 Q How long have you been at the Glenville
3 Wal-Mart?

4 A Just over one year.

5 Q Do you know the specific date that you
6 started at the Glenville Wal-Mart?

7 A It was the second week of July. I don't
8 know the exact date but I know it was after the 4th
9 of July.

10 Q Of 2015?

11 A Yes.

12 Q For what reason, if any, did you move to
13 the Glenville store?

14 A I had put in for the position of
15 co-manager when I -- I was currently a store manager
16 in Amsterdam. I put in for co-manager in Glenville
17 to step back from the store management
18 responsibilities.

19 Q Was it voluntary on your part?

20 A Yes.

21 Q Prior to the Glenville Wal-Mart, where
22 were you located?

23 A Amsterdam Wal-Mart.

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(Ryan Dunphy)

1 Q How long were you at the Amsterdam
2 Wal-Mart?

3 A Four years.

4 Q You mentioned you were the manager of that
5 store?

6 A Yes.

7 Q How long were you the manager of the
8 store?

9 A Four years.

10 Q What reason did you have to want to go
11 from a manager to a step-down to a co-manager
12 position?

13 A It would be less hours, less
14 responsibility. I had just started a family. It
15 was becoming a little too much, working too many
16 days, so, I figured I would step back, get things
17 better and then maybe go up again. Who knows?

18 Q When did you first put in an application
19 or express interest in stepping down to a co-manager
20 position?

21 A That first one that I got, so, it would
22 have been June. Then I went there in July.

23 Q It took about a month?

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(Ryan Dunphy)

1 A Yes.

2 Q Prior to the Amsterdam Wal-Mart did you
3 work at any other Wal-Marts?

4 A Yes.

5 Q Where did you work?

6 A I worked at the East Greenbush Wal-Mart
7 just before that for approximately fourteen or
8 fifteen months as a co-manager.

9 Q So, if I have my time line right, some
10 time in 2010?

11 A Yes. I was promoted in, I believe,
12 October of 2010 from Troy to East Greenbush and then
13 in East Greenbush I went to Amsterdam in June of
14 2011.

15 Q You mentioned that you were at the Troy
16 Wal-Mart before East Greenbush?

17 A Yes. I was an assistant manager at the
18 Troy Wal-Mart from 2007 to 2009. I'm sorry. I
19 started in East Greenbush in 2009, October 2009.

20 Q Prior to the Troy Wal-Mart did you work in
21 any other Wal-Marts?

22 A Yes, I did.

23 Q Where did you work?

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(Ryan Dunphy)

1 A Before that, I was in the Saratoga
2 Wal-Mart from -- I started -- that's where I started
3 in 2002, and then I was promoted to assistant in
4 Troy in 2007.

5 Q For the events that are most relevant to
6 this complaint you were in the Amsterdam Wal-Mart
7 store; correct?

8 A Correct.

9 Q What was the position of manager? Could
10 you describe your job duties?

11 A General manager -- I oversaw everything
12 that went on in the building, so, everything was my
13 duty. I just basically gave the direction for the
14 day, the generic direction out to my managers, and
15 then they would formulate a plan and get my notes
16 done and report back to me.

17 Q When you say you would send out a plan,
18 would that have been in writing usually?

19 A Normally, it's touring. We would walk
20 every morning, afternoon and evening. We would walk
21 the store a lot, and as we saw things,
22 merchandising, those things, I would give them notes
23 and they would complete them.

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(Ryan Dunphy)

1 Q In your position as general manager, did
2 there come a time when you learned about a complaint
3 made by Joseph Biasi?

4 A Yes.

5 MS. MOORE: Objection.

6 BY MR. FINN:

7 Q When was that, the first time you remember
8 hearing about it?

9 A Can you tell me which complaint?

10 Q Sure. That's a good point.

11 Specifically, an allegation of sexual
12 harassment made against Earlene Schaeffer.

13 A So, you want to know the first time I
14 heard of his --

15 Q Well, yeah --

16 A The first time he approached me?

17 Q Some of the documentation from the record
18 indicates that he spoke to a William Caswell. Are
19 you aware of that?

20 A Yes, I am aware of that documentation.

21 Q So, somewhere in December, specifically, I
22 believe, December 2, 2014 he spoke to Mr. Caswell?

23 MS. MOORE: Objection.

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(Ryan Dunphy)

1 BY MR. FINN:

2 Q Is that consistent with your recollection?

3 A I'm not a hundred percent sure, but I know
4 that I reviewed it and I saw that he had spoke to
5 him. I don't know the exact date.

6 Q Okay. That's fine.

7 With regard to when you first learned
8 about the complaint, do you have any recollection as
9 to how long before that time period that the
10 complaint had been made? Had it been a few days, a
11 few hours, a few weeks, if you know?

12 A So, how long it took me to know that he
13 made the complaint to William or --

14 Q Correct.

15 A I don't know the time frame there. I'm
16 not one hundred percent sure on that. But it would
17 have been shortly after if I do recall. He went
18 to -- because William was his hourly supervisor, he
19 went to him. Then it went to the salary manager who
20 then turned it into our ethics hotline, and that's
21 when I became aware of it.

22 Q You mentioned the salary manager. Who
23 would that be?

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(Ryan Dunphy)

1 A That was, I believe, Rebecca Paukstela.

2 (Plaintiff's Exhibit A was marked for
3 identification.)

4 BY MR. FINN:

5 Q I'll show you what has been marked as
6 Plaintiff's Exhibit A. I won't ask you to read the
7 entire document at this point. There will be
8 questions along the way where I will direct your
9 attention to certain matters. But generically, is
10 it fair to say that this is some type of software
11 management system that Wal-Mart has in place that
12 results in a report similar to what you have in
13 front of you?

14 A Yes, this is a re-cap from the Ethics
15 Hotline that we use.

16 Q So, you had mentioned that Rebecca
17 Paukstela had reported it to the Ethics Hotline.
18 This seems to be some type of case details along
19 with some summary of information and some backup
20 documentation; is that fair?

21 A Yes, it is.

22 Q Just looking at, I guess, the first page,
23 your name appears about two-thirds of the way down,

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(Ryan Dunphy)

1 "Ryan Dunphy" --

2 A Yup.

3 Q -- as a store manager?

4 A Correct.

5 Q There's a Shay Cook that's referenced
6 right below your name?

7 A Yup.

8 Q Who is Shay Cook?

9 A She was an assistant manager in the store
10 when I first got there in 2011, and she was there --
11 I'm not sure how long. I know she's not still there
12 now, but she was there for probably two years while
13 I was there maybe? Roughly.

14 Q Do you recall what involvement Shay Cook
15 had in the investigation of Mr. Biasi's complaint?

16 A I didn't even think she was there during
17 this, so, no, I don't know of anything that she
18 would have been involved in.

19 Q How about Amanda Grimm?

20 A Amanda Grimm was an assistant for --
21 again, she was there when I first got there in 2011,
22 and she was there for approximately three of the
23 four years.

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(Ryan Dunphy)

1 Q If we move to Page 339, this seems to be
2 specifically involving the ethics investigation.

3 There's a number, 14-12-2341. Do you see that?

4 A Yes, I do.

5 Q And you're copied on an email it looks
6 like at the outset of this document on Page 339, and
7 there seems to be some attachments, manager notes,
8 individual statement, investigation re-cap and case
9 details. Do you see that?

10 A Yes.

11 Q Do you remember seeing this email on or
12 about December 16, 2014?

13 A I don't remember it specifically but
14 obviously, I got it.

15 Q It appears actually that perhaps when we
16 stapled this together, Page 333 to 338 seems to be
17 actually involving a prior incident; correct? It's
18 got a different case number?

19 A Yes.

20 Q You had mentioned before that Shay Cook
21 you didn't think was involved in the sexual
22 harassment investigation.

23 A Yeah, I didn't think she was still in the

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1 building.

2 Q And perhaps, I think I had directed your
3 attention to the wrong case detail report, so I'm
4 just trying to clean that up and make sure we're on
5 the same page.

6 A All right.

7 Q It appears that starting at Page 339 is
8 really the information dealing with the sexual
9 harassment complaint.

10 A Okay.

11 Q And it appears that using that same 2341
12 as the kind of the last four digits of the Wal-Mart
13 incident number, it looks like if we move to Page
14 359, that maybe this is the appropriate case detail
15 write-up for the incident involving the allegation
16 of sexual harassment. Is that accurate?

17 A It appears to be accurate. The case
18 numbers do match.

19 Q So, in looking at the parties involved on
20 Page 359, we have Rebecca Paukstela, which you
21 mentioned was a co-manager who took the initial
22 complaint, and Mr. Caswell; is that correct?

23 A From Mr. Caswell or Mr. -- yes, she took

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1 the -- she turned the complaint into the Ethics
2 Hotline.

3 Q Do you know how she found out about it?

4 A I'm not a hundred percent sure on that,
5 no. I don't know if she got it from William or from
6 Joe himself. I don't know how she got it.

7 Q And then there's Earlene J. Schaeffer.

8 She was the subject of the complaint; correct?

9 A Correct.

10 Q And then Michael White and Joseph Biasi
11 are listed on this page as well?

12 A Correct.

13 Q Is it your understanding that Michael
14 White was some type of witness to some of the
15 information involved in this complaint as well?

16 A I believe he was named by Joseph Biasi.
17 Therefore, he needed to be interviewed as well.

18 Q So, with regard to this case detail, I
19 don't see Ryan Dunphy actually listed as one of the
20 parties involved in the investigation; is that fair
21 and accurate?

22 A It is fair. I do not see my name on here.

23 Q As far as your recollection of how the

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1 investigation was performed, would you agree that
2 you really were not involved in the investigation?

3 A Agreed.

4 Q It looks like Rebecca Paukstela was given
5 the title "authorized assignment"?

6 A Yes, she was the authorized investigating
7 manager.

8 Q And next to the job title it says, "SHM."
9 What does that stand for?

10 A That was "shift manager" I would assume
11 because their titles -- co-managers had a title
12 change to shift manager and then it went back to
13 co-manager, so, it's possible that that is just an
14 old title.

15 Q What was your understanding of how the
16 investigation, I guess, progressed from getting
17 reported to the Ethics Hotline to Rebecca Paukstela
18 investigating to there being some type of
19 conclusion?

20 A I believe it was completed per guidelines.

21 Q As the manager of the store you had
22 mentioned early on that you kind of oversaw
23 everything that went on in the building. I believe

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(Ryan Dunphy)

1 that's what you said.

2 A Yes.

3 Q Were you overseeing this investigation on
4 any level?

5 A I delegated it out and just followed up on
6 the fact that it was completed and completed to the
7 specific requirements laid out, which was due date
8 of January 12, and then if there was any problems,
9 then I would step in.

10 Q Do you know what the specific conclusion
11 of the investigation was?

12 A Not founded.

13 Q And do you know why it was not founded?

14 A I'm not a hundred percent sure, but I
15 believe because they felt that the two statements
16 did not match or coincide with each other in some
17 way.

18 Q I'll draw your attention to Page 361.

19 Who is Tiffany Alvoid?

20 A I do not know, so I would -- not that I
21 should assume, but it would probably be somebody who
22 works for the Ethics Hotline.

23 Q It looks like she had an entry in here.

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1 It says she "spoke with SHM Rebecca Paukstela about
2 this case. She stated that Joe was not a credible
3 witness. She also stated that Mike and Joe added
4 more to their statements, December 2nd statement, on
5 December 22. When she asked them about why the
6 story had changed, both offered no explanation."

7 Does that refresh your recollection as to
8 why Rebecca Paukstela may have concluded that the
9 claim was unfounded?

10 MS. MOORE: Objection.

11 You can answer.

12 A It's just the same that -- I mean, it
13 still does not give me clarity on what they're
14 saying here but it says that he's not credible. I
15 don't know.

16 BY MR. FINN:

17 Q You were here for Joseph Biasi's
18 deposition; right?

19 A Yes, I was.

20 Q Do you remember him stating that he filled
21 out a written complaint as directed by management at
22 Wal-Mart?

23 MS. MOORE: Objection.

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(Ryan Dunphy)

1 A I believe he said that he filled out a
2 statement which would be the statement requested by
3 the ethics investigation at that point.

4 BY MR. FINN:

5 Q Are you aware that Mr. Biasi and Mr. White
6 both complained about Earlene Schaeffer
7 simultaneously on December 2, 2014?

8 A No.

9 Q What is your understanding as to the
10 timing of when they each reported the alleged
11 harassment?

12 A My understanding was that Michael was
13 interviewed as a witness. I did not know if he was
14 a complainant.

15 Q If you look to Page 341, there's an
16 initial report information.

17 A Okay.

18 Q And this indicates that it was reported on
19 12/2/2014; correct?

20 A This report was done on 12/2/2014, yes.

21 Q And it said, "Reported to Will Caswell,
22 back room zone manager"?

23 A Yes.

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(Ryan Dunphy)

1 Q I assume since this is the initial report
2 information, this is the first documentation in the
3 system of a complaint being made?

4 A Yes. This would be the form that Rebecca
5 would have filled out after placing the call to the
6 Ethics Hotline.

7 Q In the document initial allegation, in
8 that box, isn't it fair to say that Joseph reports
9 that Earlene said, "He just likes to play with
10 himself," and Michael White stated that Earlene
11 stated, "Could she have my nuts"?

12 MS. MOORE: Objection.

13 A It is written in here that Joseph states
14 the playing with himself comment and Michael states
15 the could she have my nuts comment.

16 BY MR. FINN:

17 Q And this is the initial report; correct?

18 A Correct.

19 Q And with regard to Michael White's
20 statement or the way it's written up here, it says
21 that Michael states on December 2, 2014 when himself
22 and Joseph were down stacking the remix truck,
23 Supervisor Earlene stated, quote, "Could she have my

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1 nuts," end quote; Correct?

2 A That is what is written in the box, yes.

3 Q So, right at the first initial report as
4 it was taken by Earlene Schaeffer, she reported that
5 Joseph Biasi was there for both alleged incidents of
6 harassment; isn't that correct?

7 MS. MOORE: Objection.

8 A The way you stated that was incorrect.

9 Earlene Schaeffer didn't take a report.

10 BY MR. FINN:

11 Q I'm sorry. All right.

12 Who put this information into the Ethics
13 Hotline?

14 A Rebecca Paukstela.

15 Q Rebecca Paukstela -- when she reported
16 this information, she reported that Joseph Biasi was
17 there both for the incident that pertained to the
18 statement, "He just likes to play with himself"
19 aimed at himself, as well as the incident involving
20 Michael White in which Earlene Schaeffer was alleged
21 to have said, "Could she have my nuts;" isn't that
22 correct?

23 MS. MOORE: Objection.

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(Ryan Dunphy)

1 A Rebecca has -- she wrote down the
2 statements in here that Joseph states on December 2
3 that he is alleging E.J. Schaeffer of making that
4 comment of playing with himself and that Michael
5 states on December 2 that while down stocking with
6 Joseph, the comment of "Could she have my nuts" was
7 made.

8 Q But it says, "Document initial allegation"
9 right next to that box; right?

10 A Yes, it does.

11 Q So, that's what the initial allegation
12 was.

13 If we move to the next page, the
14 investigation, under Number 3, the two comments are
15 listed as 1 and 2 at the top of Page 342; correct?

16 A Correct.

17 Q The findings are for the first one, "He
18 just likes to play with himself," "After a total
19 recap, I find that the two statements are similar
20 but do not match, and also, Michael doesn't mention
21 this in his original statement. Not substantiated."

22 Do you see that?

23 A Yes, I do.

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(Ryan Dunphy)

1 Q Do you know why if the initial report to
2 Rebecca included both incidents, why she felt like
3 their stories changed?

4 A I don't know what she was feeling, but I
5 do believe there was no supporting document, no
6 supporting statement from Michael White, which is
7 what was requested as he was an individual involved
8 in the initial statement of the initial allegation
9 from Joseph Biasi on E.J. For the first statement
10 he did not provide a witness statement that was
11 substantiated.

12 Q Do you know whether anyone asked Michael
13 White whether he witnessed that incident?

14 A He was interviewed. Well, he's listed as
15 an interviewee, so -- "Date interviewed, 12/23."

16 Q The initial statement that she has a
17 problem with is the statement written on 12/2;
18 correct?

19 A The statement that was called in was the
20 Joseph Biasi allegation because Joseph Biasi made
21 the allegation of Earlene Schaeffer making the
22 comment of "He likes to play with himself."

23 Q But when it talks about the reason why --

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1 one of the reasons why they believe it's not
2 substantiated, it says, "Michael didn't mention this
3 in his original statement," as far as the allegation
4 about playing with himself; correct?

5 A That is what it states, yes.

6 Q Do you know who took the original
7 statement from Michael White?

8 A The statement for this document would have
9 been Rebecca Paukstela.

10 Q Do you know whether Rebecca Paukstela gave
11 Mr. White any direction as to what he should or
12 should not write in the statement of fact when he
13 wrote up his report on 12/2/14?

14 A She is not supposed to do that, so she
15 would not have done that.

16 Q Did you understand from Mr. Biasi's
17 testimony that it was his understanding that he was
18 only to write up things that pertained directly to
19 him?

20 A What was that again about his testimony?

21 Q When Mr. Biasi testified, I believe his
22 testimony, in sum and substance, was that the reason
23 why he left out the incident dealing with Michael

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(Ryan Dunphy)

1 White in his statement was that he was directed to
2 write up only what happened to him and that Michael
3 White would be writing up the incident as alleged
4 happened to Michael White. Do you recall that
5 testimony?

6 A I don't recall that testimony.

7 Q Do you know whether or not the
8 conversations that Rebecca Paukstela had with
9 Michael White and Joseph Biasi on this date,
10 December 2, 2014, explored any other topics like
11 whether Michael White had witnessed Joseph Biasi's
12 incident or whether Joseph Biasi had witnessed
13 Michael White's incident?

14 A That I don't know. I don't know about the
15 conversation there. I wasn't there.

16 Q Would it be typical in the investigation
17 process of a sexual harassment complaint for the
18 interviewer to keep notes of what was said?

19 A Yes.

20 Q Do you know whether Rebecca Paukstela has
21 produced any notes from her conversations with
22 Joseph Biasi and Michael White on December 2, 2014?

23 A I'm not sure. It would be in here.

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(Ryan Dunphy)

1 Q If you were to read those comments or
2 notes, would that be something you're just reading
3 on a piece of paper or is that something that you
4 remember discussing with Rebecca Paukstela at the
5 time?

6 A Verbiage. What am I reading?

7 Q Well, rather than have you go through and
8 perhaps find something and just read something for
9 the first time that Rebecca Paukstela may have
10 documented, I'm asking you as you sit here today, do
11 you have any independent recollection of whether or
12 not Rebecca Paukstela actually took notes or whether
13 Rebecca Paukstela actually had a conversation with
14 Michael White or Joseph Biasi on December 2, 2014
15 other than what is reflected?

16 A I have no facts other than what is
17 reflected in the report.

18 Q Were you asked to review the findings of
19 the sexual harassment complaint?

20 A I was asked to have the closing
21 conversation. So, after the report was closed out,
22 the report was then reopened because Joseph Biasi
23 claimed that he was never given the conclusion of

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1 the report, so, there was a documented closure
2 conversation from Rebecca. He claims that did
3 not -- the conversation did not happen. So then, I
4 had that conversation with him, reclosed the report.

5 Q When did you have the conversation to
6 reclose the report, do you know?

7 A I don't know, but I do know it's in here.

8 Q I'll try to find that. Maybe it's not in
9 here.

10 Your understanding is there was a second
11 investigation essentially after Joseph raised
12 concerns about not knowing the conclusion of the
13 investigation; is that fair?

14 A Not an investigation. I was just asked to
15 have the closing conversation with him. So, they
16 cannot close out the investigation without the
17 closure conversation, so they re-opened it because
18 he claimed that closure conversation did not happen.
19 So, they re-opened it and assigned it to me. I had
20 the closure conversation with him and closed the
21 case back up.

22 Q And as you sit here today, you don't have
23 any recollection as to when that conversation took

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(Ryan Dunphy)

1 place?

2 A I would just be guessing on the date, but
3 it was after this.

4 Q So, according to that documentation when
5 was the case closed out?

6 I can draw your attention to Page 359 if
7 you think it would help.

8 A Oh, thank you.

9 The case was closed on January 2, 2015.

10 (Plaintiff's Exhibit B was marked for
11 identification.)

12 BY MR. FINN:

13 Q I'll show you what has been marked as
14 Exhibit B.

15 In the issue summary on the first page,
16 366, it says, "Joseph has concerns regarding a
17 previous investigation and alleges Rebecca's
18 relationship with E.J. affected the outcome of the
19 previous investigation."

20 Do you see that?

21 A I do see that.

22 Q Does this refresh your recollection as to
23 when you may have gotten involved with the closing

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(Ryan Dunphy)

1 process of this claim?

2 A I'm sure I got involved at the conclusion
3 of the first -- or when they reopened this one.

4 Q And when was that?

5 A Whenever this was emailed to me.

6 Q Well, if we look at the case opened date
7 under the specific investigation, it indicates
8 February 2, 2015; correct?

9 A Correct.

10 Q All right. So, is that a good estimate as
11 to when you may have gotten involved?

12 A Yeah, I would have gotten involved right
13 after they emailed the case to me. It would have
14 been opened just as soon as he made the call, and
15 then I would have been involved as soon as this was
16 sent to me.

17 Q Were you provided a copy of the relevant
18 emails that are contained, for example, at Page 371?

19 A I believe so.

20 Q 375?

21 A These were probably emails to me. I'm
22 sure I'm on one of the forwards.

23 Q Were you concerned at this point about Joe

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(Ryan Dunphy)

1 Biasi's concerns involving his alleging he was not
2 advised of the status of the investigation?

3 A I take all accusations like this
4 seriously, so, as I got this, I believe I spoke to
5 him after this.

6 Q At this point you had not spoken to Joe
7 Biasi about the closing of his complaint; right?

8 A The date of this is February 10?

9 Q Yes.

10 A I'm not sure on the time line, but I don't
11 believe I had spoke to him before this.

12 Q Were you upset with Joseph Biasi because
13 he went to corporate Ethics Hotline as opposed to
14 dealing with this with you in the store?

15 A No. "Upset" is not the right term.

16 Q What is the right term?

17 A Just concerned that he wouldn't feel
18 comfortable coming to me, but absolutely not upset.

19 Q At this point in time did you learn when
20 you got involved, that Rebecca Paukstela alleged to
21 have a conversation with Joseph Biasi advising him
22 of the closing of his complaint?

23 A What was that again?

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1 Q When you got involved, did you find out
2 that Rebecca Paukstela had alleged that she had a
3 conversation with Joseph Biasi advising him of the
4 closing of his complaint?

5 A I had -- my notice of when she had that
6 was in this paperwork, that she closed it out. She
7 has a document that she had a closing conversation
8 on -- I don't remember what the date was.

9 Q So, you would have known about that at the
10 time that she entered it into the case management
11 system?

12 A As soon as she entered that in and it
13 closed out, I would know -- I would be notified that
14 the case has been closed and I would have access to
15 that document that she had the closing conversation.

16 Q You would have had access to it. Do you
17 have any recollection of you actually reviewing it
18 at that time?

19 A In detail, no, but I do remember it being
20 closed out.

21 Q So, when this new complaint goes to Ethics
22 involving Joseph's concerns that the prior
23 investigation results had not been shared with him,

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1 what was your next step in the process, if any?

2 A My next step would be to set up a time to
3 have that closing conversation with Joseph.

4 Q Did you have a conversation with Rebecca
5 Paukstela about whether or not she, in fact, had the
6 closing conversation previously?

7 A I would have, yes. I don't remember any
8 details of it but I definitely would have asked her,
9 and if she said, "Yes," which she would have, it
10 would be over, and if she had given me a different
11 answer, then I would have opened up a new
12 investigation on Rebecca if she had lied on this
13 document, but it was not my feeling that she did.

14 Q In looking at Exhibit B, can you identify
15 when it is that you had the closing conversation
16 with Joseph Biasi?

17 A Is there a page I should go to?

18 Q Frankly, I don't see any documentation of
19 when you allegedly had that conversation so that's
20 why I'm asking you.

21 A There is.

22 MS. MOORE: There -- yeah, we've turned it
23 over but I don't think it's in this document.

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1 A It's not in here but there is another case
2 closure detail sheet that has in it my closing
3 conversation, and I don't remember the exact date.

4 BY MR. FINN:

5 Q In the first page of this document,
6 Exhibit B, it says, "parties involved," and it
7 involves Rebecca Paukstela, Mike White, Joseph
8 Biasi, Earlene Schaeffer, Sheila Borst. Is there a
9 reason why you're not listed in the parties involved
10 section?

11 A If he -- if Joseph makes the complaint and
12 he doesn't cite me, then I would not be involved.

13 Q So, when you get involved to have that
14 closing conversation, do you have any duties as a
15 manager to go into the electronic software system or
16 to input information or provide that information to
17 anyone so that it accurately gets reflected in the
18 case details?

19 A I don't know what you mean electronic
20 software.

21 Q Well, this document before us, Exhibit B,
22 is the case details --

23 A Correct.

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1 Q -- that is kept in the Wal-Mart software
2 system.

3 A We don't have access to this, no.

4 Q Okay. Previously --

5 A We only submit -- sorry.

6 Q That's all right.

7 A We only submit what is requested of us.

8 So, we'll get a blank document that says, "Please
9 fill this out," witness statement documents. We
10 fill them out, fax them to the appropriate case
11 handler and they take it from there.

12 Q Previously, you had mentioned that at the
13 conclusion of the investigation into Earlene that
14 you would have had access to it. Do you remember
15 testifying --

16 A To the statements. I would have access to
17 anything we've done at store level. Once it leaves
18 store level with the details in this, I do not have
19 access to it.

20 Q I misunderstood your testimony. Thank you
21 for clarifying that.

22 Would it be typical of Wal-Mart that if
23 you sent documentation to Ethics about the closing

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1 of a complaint, that it would be incorporated into
2 the case details?

3 A If -- so, you're asking if I sent in the
4 closing conversation document, would it be in the
5 case details?

6 Q Yes.

7 A They couldn't close it without it, so,
8 yes.

9 (Plaintiff's Exhibit C was marked for
10 identification.)

11 BY MR. FINN:

12 Q Before I move to Exhibit C, can we move to
13 Page 385?

14 MS. MOORE: Is that Exhibit B or A?

15 MR. FINN: On B.

16 BY MR. FINN:

17 Q Actually, if we look at Page 383 to 385
18 and onto 386, it appears to be a string of emails
19 that had started with a February 10, 2015 email from
20 Joseph Biasi. Do you see that?

21 A It starts on 383?

22 Q It starts on 383 but because of it being
23 in kind of reverse chronological order, the first

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1 email in the string is actually on 385 into 386.

2 A Uh-huh.

3 Q Do you see that February 10th email from
4 Joseph Biasi?

5 A I do.

6 Q It says in the first line, "Good
7 afternoon. It has been almost two weeks since my
8 first and last email that I sent you regarding Four
9 to One Supervisor Earlene, E.J. and the two counts
10 of sexual harassment against her by myself and Mike
11 White. I have heard nothing from you in response
12 and her attitude is getting worse. She gets
13 sarcastic and verbally brash for no reason."

14 Do you see that?

15 A I see it.

16 Q Were you advised of this February 10th
17 email from Joseph Biasi?

18 A I don't remember. I believe so, but I
19 don't know when I was brought aware of this. I
20 couldn't give you a time line on it, but I have seen
21 this before.

22 Q Did you interpret what Mr. Biasi was
23 saying as that he was complaining of retaliation by

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1 Earlene?

2 MS. MOORE: Objection.

3 A He does not mention retaliation in here.

4 BY MR. FINN:

5 Q He says that after his complaint, that
6 "her attitude is getting worse. She gets sarcastic
7 and verbally brash for no reason." Would you
8 interpret that as a concern over retaliation?9 A It just says, "her attitude is getting
10 worse." I do not interpret this as retaliation. I
11 interpret this as his -- just his feeling on that, I
12 suppose.13 Q His feeling that after the complaint was
14 made, that she was getting sarcastic and verbally
15 brash for no reason?16 A That he's following up that that's how she
17 was acting to begin with and it's just continuing is
18 what he's saying. That's how I'm interpreting it.
19 I'm not seeing retaliation in it.20 Q Oh, I don't think he used the word,
21 retaliation. I think that's fair. I'm asking you
22 as a manager, if you receive a complaint that after
23 a sexual harassment complaint is made, aSUSAN FLORIO, RPR
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1 supervisor's attitude is getting worse, she gets
2 sarcastic and verbally brash for no reason, whether
3 you would interpret that as a concern involving
4 retaliation.

5 A I would not. Given the history, I would
6 not.

7 Q What do you mean by "given the history"?

8 A He -- Joe Biasi -- this would not be his
9 first complaint that a supervisor would be mean to
10 him or whatever in his words. He has had a problem
11 with supervisors with almost every single one of his
12 supervisors, so, in one form or another he has made
13 several complaints.

14 Q Did you see him as a complainer?

15 A I saw him as an associate that would -- if
16 he was not comfortable or happy with the workload,
17 that he would definitely come to me and express his
18 concern.

19 Q Did you think he was like a whiner?

20 A I wouldn't label my associates like that,
21 no.

22 Q Did you have a problem with him coming to
23 you with concerns?

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1 A Absolutely not.

2 Q Do you have an open door policy at
3 Wal-Mart?

4 A Absolutely.

5 Q Using this February 10 date, is it fair to
6 say that you had not had your conversation with
7 Joseph Biasi at this point?

8 A I don't know for sure, but I would --
9 given this, I would think it came after this.

10 Q It looks like in the back and forth
11 between Linda Burke and Stephanie Currao that
12 Stephanie Currao was advised to -- advised Mr. Biasi
13 of the closing of the complaint; is that fair?

14 A Where would it say that? The time line is
15 just kind of confusing. Trying to read this in
16 reverse is kind of --

17 BY MR. FINN:

18 Q Gotcha.

19 Well, it looks like Mr. Biasi, as from the
20 time line, writes on February 10, 2015 at
21 1:36 p.m.; correct?

22 A Yes, there's an email from Joseph to
23 Global Ethics on that date at that time.

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1 Q And it looks like on February 11 Linda
2 forwards the concern in the email to Stephanie
3 Currao; correct?

4 A Yes.

5 Q And on March 25, 2015 at 9:53 a.m.
6 Stephanie states, "Hi, Linda. I did follow up with
7 Joe via email and attempted to call the number I had
8 on file. Unfortunately, I have not received any
9 response from him after multiple attempts. This
10 follow-up was sent the day before he was terminated
11 for gross misconduct. Therefore, I was attempting
12 to reach him at home. Since I've had no further
13 follow-up with him regarding this, I'm not sure
14 where to go next."

15 Do you see that?

16 A I see that.

17 Q And it looks like then on March 25, 2015
18 at 8:25 p.m. there's some back and forth about what
19 took Stephanie so long to get back to Linda, and
20 then she says, "There's no need to apologize. If
21 you're delayed, just shoot me an email. That way I
22 won't be bugging you. I suggest that you email Joe
23 that you have completed the investigation and it has

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1 been handled appropriately."

2 Do you see that?

3 A Which page is it?

4 Q 383.

5 A Okay. I see it.

6 Q And then if we look toward Page 387, it
7 appears to be an email from Stephanie Currao to
8 Joseph Biasi advising him that, "All appropriate
9 follow-up has occurred and the investigation is now
10 closed."

11 Do you see that?

12 A I do see that.

13 Q Do you know what Stephanie Currao meant by
14 "All appropriate follow-up has occurred and the
15 investigation is now closed"?

16 A I would assume that all required documents
17 had been sent into the Global Ethics and they felt
18 that it was enough to close it.

19 Q Do you know what follow-up, if any,
20 Stephanie had with any of the managers involved?

21 A I would not know any of that.

22 Q Do you know whether Earlene Schaeffer
23 received any kind of discipline as a result of the

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1 allegations?

2 A To my knowledge she did not, but I'm not a
3 hundred percent sure.

4 Q In this email to Joseph Biasi it doesn't
5 advise him that the complaint was unsubstantiated;
6 isn't that true?

7 A It just says that it's closed.

8 Q And that appropriate follow-up of this
9 occurred?

10 A Correct.

11 Q Do you know if Joseph Biasi was ever told
12 that his complaint was unsubstantiated?

13 A I don't know. I'm not a hundred percent
14 sure exactly if he was told or what the details of
15 that conversation would be.

16 Q If you look at Exhibit C now, what is
17 Exhibit C?

18 A This is an exit interview.

19 Q For Joseph Biasi?

20 A Yes.

21 Q Do you recall being involved with regard
22 to the termination of Joseph Biasi?

23 A I was not involved in this part of it, no.

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1 Q In the exit interview?

2 A I was not involved in the exit interview.

3 Q At what level did you get involved in the
4 termination of Joseph Biasi?

5 A I knew that there was an investigation to
6 an environmental compliance infraction and that the
7 punishment could be up to and including termination.

8 Q Who advised you of that?

9 A My asset protection manager, Gwen.

10 Q Do you know how the information was
11 reported to Gwen?

12 A For the infraction?

13 Q Yes.

14 A A bar code was turned into claims of a
15 item that had been disposed of. When the claims
16 clerk scanned that item, it came up as a hazardous
17 waste item, but the item itself was not there. So,
18 we could not process it because any environmental
19 compliance items must be processed through the
20 hazardous waste station. The item not being there
21 was a problem, so the claims clerk then turned that
22 information into our asset protection manager, who
23 also covers compliance. She then did an

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1 investigation to find out what happened to the item,
2 and during that investigation we saw that Joseph
3 Biasi had taken the item and threw it down the
4 compacter.

5 Q When you say "we saw it," was it on video?

6 A It's on video.

7 Q Do you have a copy of the video still?

8 A I don't.

9 Q Do you know whether it has been
10 produced --

11 A I don't know.

12 Q -- to your attorneys?

13 When is the last time you viewed the
14 video?

15 A I don't remember reviewing the video.

16 Q You don't remember ever seeing it
17 yourself?

18 A No.

19 Q So, when you say that there's a video of
20 him sending it down the compacter, who told you
21 that?

22 A Gwen.

23 Q After this was reported to you, what as a

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1 manager was your involvement in the investigation or
2 the decision to terminate Joseph Biasi?

3 A I advised my asset protection manager to
4 make sure she got all of the facts, and then once
5 she got all the facts together, we determined that
6 the violation of the environmental compliance
7 justified termination, so the managers then
8 terminated Joseph.

9 Q When you say "we decided," who is the
10 collective "we" in this?

11 A Myself, Gwen and Rebecca.

12 (Plaintiff's Exhibit D was marked for
13 identification.)

14 BY MR. FINN:

15 Q I'll show you what has been marked as
16 Exhibit D. It states it's a Coaching for
17 Improvement policy.

18 A Okay.

19 Q Are you familiar with this policy?

20 A Yes, I know of it.

21 Q Are you familiar with Wal-Mart's policy to
22 have a first written coaching, a second written
23 coaching, a third written coaching as far as

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1 progressive discipline or coaching?

2 A What do you mean by policy?

3 Q Well, this is the coaching for improvement
4 policy; correct?

5 A Yes.

6 Q And is this a policy that you followed in
7 the Amsterdam store?

8 A We followed the environmental compliance
9 policy which includes progressive levels of
10 coaching, so, the steps would not need to be
11 followed when a environmental compliance infraction
12 occurs.

13 Q So, this coaching for improvement policy
14 does not apply to Joseph Biasi's termination?

15 A His -- the environmental policy trumps
16 this. It says in it that it will -- I mean, if we
17 read into this, there is infractions that can result
18 in progressive coachings or otherwise known as
19 "skipping steps."

20 Q So, if we move, for example, to Page 855,
21 it talks about termination?

22 A (The Witness complies.)

23 Q It says, "If you receive a level of

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1 coaching in your job performance where conduct
2 remains unacceptable, we may terminate your
3 employment."

4 Do you see that?

5 A Where is it?

6 Q It's right under "termination."

7 A Okay. Yup, I see it.

8 Q Do you know whether Joseph Biasi had ever
9 received any level of coaching related to hazardous
10 waste disposal?

11 A I do not know off the top of my head.

12 Q Do you have any reason to believe that he
13 had?

14 A He had multiple coachings. I'm not sure
15 what they were for, but he had several, several
16 coachings.

17 Q At the time you decided to terminate him,
18 did you have an understanding that he had a coaching
19 that related to hazardous materials that had gone
20 uncorrected and remained unacceptable?

21 A I was not aware of any coachings that he
22 had specifically to that, no.

23 Q It states, "Additionally, if your

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1 unacceptable conduct is found to be serious, this
2 may result in your immediate termination."

3 Do you see that?

4 A Yes.

5 Q Then it gives some examples of misconduct
6 that "may warrant immediate termination, including
7 but not limited to the following"?

8 A Yes.

9 Q Which if any of these bullet points apply
10 to Joseph Biasi?

11 A Well, it's not limited to that following,
12 so I don't know if it's listed in here or not, but
13 violation of federal, state, local statute
14 regulation through your work activities would
15 probably be the closest one.

16 Q What violation of state, federal or local
17 law did Joseph Biasi violate?

18 A He put hazardous material in a garbage
19 compacter, so he did not process hazardous material
20 correctly.

21 Q And you have a policy on that at Wal-Mart,
22 correct, about how to properly dispose of hazardous
23 materials?

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1 A Yes, I believe we do.

2 Q Was there any evidence in your
3 investigation that Joseph Biasi intentionally or
4 willfully violated that policy?

5 A His intent -- it would be hard for me to
6 determine his intent. Did he intentionally throw it
7 down the compactor? Absolutely. What he was
8 thinking at the time I can't speak to.

9 Q Well, did you have any reason to believe
10 that he knew the policy and knew what he was
11 supposed to do but intentionally chose not to follow
12 the policy?

13 A Yes.

14 Q What was your evidence to support that?

15 A We had a training session shortly before
16 this where it was held by my co-manager, Christopher
17 Davey, and he explained and showed all of the
18 unloaders, including Joseph Biasi, how to dispose of
19 hazardous waste and what could happen as far as
20 punishment up to and including termination for a
21 single offense.

22 Q In that particular training was the word,
23 "nicotine" specifically used as a hazardous

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1 material?

2 A I wasn't there for the training, so I
3 don't know exactly the words he used, so, I can't
4 speak to that.

5 Q I mean, you were here for Joseph Biasi's
6 deposition. Do you understand that he did not
7 understand that the nicotine patches were, in fact,
8 hazardous materials?

9 A I don't remember his deposition but I do
10 know he knew how to dispose of hazardous material.
11 He was given plenty of training, all items. He
12 disposed of that item incorrectly.

13 Q Had he disposed of hazardous materials in
14 the past?

15 A To my knowledge, I don't know.

16 Q Do you have any reason to believe that he
17 inappropriately disposed of hazardous materials in
18 the past?

19 A I have no facts to warrant that, no.

20 (Plaintiff's Exhibit E and F were marked
21 for identification, respectively.)

22 BY MR. FINN:

23 Q I show you what has been marked as Exhibit

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1 E.

2 What is this policy?

3 A This is the Hazardous Waste Policy, EC03.

4 Q Is this the policy you had referenced that
5 could result in immediate termination for improperly
6 disposing of hazardous materials?

7 A I believe so.

8 Q Do you know from this training or this
9 policy whether there's any specific direction about
10 nicotine products or how they were supposed to be
11 disposed of?

12 A I do not know if it's listed in this
13 policy.

14 Q If we look at Page 492 -- or actually --
15 491 is the start of it actually. I'm sorry.

16 This is the standard operating procedure
17 for products containing nicotine, excluding standard
18 cigarettes. Do you see that?

19 A Products containing nicotine, excluding
20 standard cigarettes, yes.

21 Q What, if anything, did Joseph Biasi do
22 incorrectly?

23 A Joseph Biasi chose not to scan the item

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1 using the handheld terminal that he was trained on
2 that would have prompted him not to throw that item
3 away. It would have flagged it and said you must
4 dispose of this as hazardous waste.

5 Q Do you see the section that talks about a
6 loose piece of gum or lozenge or an unwrapped patch
7 or a leaking E-cigarette or refill, i.e., liquid
8 coming out?

9 A Yes.

10 Q And it says that you should answer the
11 question, "yes" for leaking materials if those
12 situations are present, but in all other instances
13 answer "no" to the leaking or damaged question. Do
14 you see that?

15 A I see it.

16 Q Do you have any reason to believe that the
17 product involved with Mr. Biasi involved a loose
18 piece of gum, an unwrapped patch or a leaking
19 E-cigarette?

20 A I don't have any facts to that.

21 Q So, why are you so convinced that had he
22 scanned the item, it would have told him he couldn't
23 get rid of it then?

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1 A Because we scanned the item and it said
2 process it -- he removed the bar code from the item
3 and put it in claims, and when we scanned it, it
4 said "process as hazardous waste." But the item was
5 not there to be processed because he took the
6 physical item and threw it down the compacter.

7 Q Is it your position that in all instances
8 the handheld terminal must be used to scan all items
9 when working in the back of a Wal-Mart store?

10 A If you're going to dispose of it,
11 absolutely.

12 Q And that was told to Joseph Biasi?

13 A In his training, yes.

14 Q Do you know whether Joseph Biasi and his
15 co-workers in the area where he worked routinely
16 followed that policy?

17 A I can't speak to every single instance,
18 but they were given plenty of training on it and
19 they knew the ramifications if they did not do it.

20 Q Do you know whether Wal-Mart kept that bar
21 code for the product?

22 A That I don't know.

23 Q When was the last time you saw it?

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1 A The day that it was turned into claims and
2 the claims associate was upset because it kind of
3 falls on her and she's responsible for all hazardous
4 materials being processed. It's shipped anyways and
5 she was unable to ship it because the item was not
6 there.

7 Q Other than what you've told me so far,
8 what other violations of this policy, the hazardous
9 waste policy, were committed by Joseph Biasi leading
10 to his termination?

11 A That I can think of right now, none.

12 Q When you made the determination that this
13 was a serious enough infraction to result in
14 immediate termination, what were the factors that
15 you relied upon?

16 A The fact that we've had plenty of
17 training, plenty of resources and he just chose not
18 to do it.

19 Q Can you identify any other employees at
20 the Amsterdam Wal-Mart that have been immediately
21 terminated for violating the hazardous waste
22 disposal policy?

23 A I can think of two. I don't know their

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1 names. A CSM was terminated -- and that's customer
2 service manager -- for dumping windshield wiper
3 fluid down the drain. And another unloader before
4 Joseph -- but Joseph was working there -- dumped
5 motor oil down a drain and was terminated
6 immediately.

7 Q And these incidents happened before Joseph
8 Biasi was there?

9 A I'm not sure of the time line on that. I
10 am pretty sure the motor oil one did. I'm not sure
11 about the CSM one.

12 Q Was one of the individuals named James
13 Cooper?

14 A No.

15 Q Do you know if James Cooper has ever been
16 disciplined for violating HAZMAT policy?

17 A No. James Cooper was terminated for
18 throwing product away without accounting for it
19 financially. He just threw it away.

20 Q And had he had prior discipline?

21 A I'm not sure of his prior discipline. I
22 don't remember.

23 Q And Danielle Noonan -- is that the

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1 individual who dumped motor oil down the drain?

2 A I don't know. Danielle or Daniel?

3 Because Danielle would be the CSM and I don't know
4 the name of the unloader at all.

5 Q Do you have any other information about
6 those two incidents that you've identified?

7 A I can't think of it.

8 Q Who would have more information about
9 those two incidents involved?

10 A Possibly, personnel, where the files are
11 kept, but I don't know.

12 Q At the time that you made the decision to
13 terminate Joseph Biasi, did you know about those two
14 situations?

15 A The motor oil and the -- I am not sure. I
16 don't know the time line. I just know that I look
17 at each infraction as its own. I don't -- I mean,
18 we take into account what the policies are and
19 whether that individual violated them or not.

20 Q So, what factors -- when you looked to
21 decide whether Mr. Biasi was going to get a warning,
22 a coaching or termination, what were the factors
23 that led you to believe that he needed to be

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(Ryan Dunphy)

1 terminated?

2 A The intense training and focus we've had
3 on environmental compliance. It was a very huge
4 subject and topic in our store and in the whole
5 company, and the fact that we went through that
6 training and he just again chose not to follow the
7 simple guidelines and disposed of hazardous material
8 incorrectly I thought was a big enough violation to
9 justify termination.

10 Q How long did it take you to determine
11 that? Was it pretty quick?

12 A No. They had to do the investigation
13 first, so Gwen did the investigation. It took a
14 little while to get everything together, but once
15 all the facts were there, and that coupled with like
16 I said, the training, the materials that were
17 available throughout his whole career, I came to
18 that determination.

19 Q If we look back at the exit interview --
20 which exhibit is that?

21 A Exhibit C.

22 Q Exhibit C -- is this the document that
23 shows essentially, the reason why Joseph Biasi was

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(Ryan Dunphy)

1 fired and the date?

2 A Yes. This is the exit interview.

3 Q It says, "On January 27, 2015 Joseph Biasi
4 was observed throwing a Nicorette box into the trash
5 can, which was then thrown into the compacter
6 without verifying if there was any HAZ waste that
7 may have been present. This is in direct violation
8 of environmental compliance which Joseph was
9 thoroughly trained on."

10 Do you see that?

11 A Yes, I do.

12 Q Are those your comments?

13 A No.

14 Q It's in the box that says "manager
15 comments." Do you know whose comments those are?

16 A Whoever processed the termination, which
17 would have been either Jason or Thomas, but given
18 which one he is, it would have had to have been
19 Jason because he is the initiator in this exit
20 interview.

21 Q The date that this determination was made
22 was February 16, 2015; isn't that correct?

23 A That is correct.

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(Ryan Dunphy)

1 Q All right. And if we look back at Exhibit
2 B, we know that Joseph Biasi had written a second
3 email to corporate on February 10, 2015, and that
4 was the email in which he had stated that, "E.J.'s
5 attitude is getting worse. She gets sarcastic and
6 verbally brash for no reason." Isn't that accurate?

7 A That statement was sent on that date, yes.

8 Q So, six days later he was terminated;
9 isn't that correct?

10 A That is correct.

11 Q In your discussions with Mr. Biasi was
12 there any concern raised about the timing of his
13 termination by Mr. Biasi?

14 A When he opened doored his termination, he
15 had brought that topic up, yes.

16 Q What was your conversation with Mr. Biasi
17 about that?

18 A That those two things had nothing to do
19 with each other.

20 Q Did Mr. Biasi seem satisfied with your
21 answer?

22 A Yes. He did not -- he did not get
23 emotional or argue intensely. We just had a

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(Ryan Dunphy)

1 conversation.

2 Q Did you consider giving Mr. Biasi his job
3 back?

4 A No.

5 Q Take a look at the Waste Management Chart,
6 Bates Number 504.

7 I guess the first question is, do you see
8 anything on this Waste Management Chart that shows
9 that nicotine products is a hazardous waste product?

10 A On this chart it does not name -- it
11 doesn't have nicotine on it.

12 Q It gives several other examples, like pool
13 chemicals, liquid bleach, fluorescent tubes, rubbing
14 alcohol, camp fuel, hair spray, insect spray, spray
15 paint and aerosols, drain openers, pesticides,
16 things like that; right?

17 A Right. It just gives a couple of examples
18 for each box.

19 Q Which box would nicotine fall under?
20 Would it be toxic, reactive, universal waste,
21 flammable liquids, flammable solids or compressed
22 gas, do you know?

23 A I'm not sure, but I would scan it with the

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1 handheld terminal and it would tell me.

2 Q Under "resources" it says, "Use your
3 resources to determine how an item should be
4 managed." And in there it lists, "handheld
5 terminal, shelf label or price sign and standard
6 operating procedures available on the wire."

7 Do you see that?

8 A Yes, I do.

9 Q So, in fact, there are three alternatives
10 given to employees as to how they can check whether
11 something is hazardous; isn't that accurate?

12 A It's showing three here, yes.

13 Q And if it's an unknown waste, it gives
14 some guidelines on that as well as non-hazardous
15 waste; isn't that correct?

16 A Yes.

17 Q So, Mr. Biasi had determined that the
18 nicotine product was non-hazardous because a patch
19 was not opened for example. According to this
20 policy he could dispose of it in the trash can or a
21 compacter; correct?

22 A No. Where does it say that?

23 Q Well, I understand that you disagree, that

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(Ryan Dunphy)

1 nicotine is, in fact, a hazardous substance;
2 correct?

3 A I just go with what the handheld terminal
4 would tell me. If it tells me it's hazardous, it's
5 hazardous.

6 Q But if Mr. Biasi had determined that it
7 was non-hazardous, the policy says, "Dispose of it
8 in the trash can or compacter;" right?

9 A If he would determine that, but he would
10 make his determination without using the resources
11 to the left, and he has no right to make that
12 determination without using the proper resources.

13 Q What about the nicotine written policy?
14 Doesn't that provide some guidelines on how nicotine
15 products should be disposed of?

16 A Nicotine policy. This one right here?

17 Q Page 2 on the second page, which is
18 actually Bates Number 491, it says, "standard
19 operating procedure, products containing nicotine
20 excluding standard cigarettes." Wouldn't you agree
21 that that provides training and information to
22 employees about nicotine products?

23 A Right in this policy it says, "The

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1 handheld terminal may direct you to ship to the
2 vendor or return center." It tells -- I mean, he
3 should be using the handheld terminal.

4 Q Well, what's the point of having a
5 standard operating procedure that's written up if
6 you're just going to scan everything and listen to
7 the handheld?

8 A To make it easier.

9 MS. MOORE: Objection.

10 A The handheld is in -- he has access to
11 that his entire shift, so he does not have to stop
12 what he's doing and go research a procedure. He has
13 that opportunity. Obviously, we provide them for
14 him but we try to make it as easy as possible.

15 BY MR. FINN:

16 Q Joseph Biasi had been working for the
17 company for about twenty years; correct?

18 A I believe so. Yeah, he made it nineteen
19 or twenty years, yes.

20 Q Do you believe that this is the first time
21 he had ever disposed of a nicotine product?

22 A I wouldn't have any facts one way or the
23 other on that.

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(Ryan Dunphy)

1 Q Do you know how common it is for nicotine
2 products to be involved in the claims procedure?

3 A No, not off the top of my head.

4 Q As far as recordkeeping at Wal-Mart, is
5 there some type of report or list that is run about
6 all items that have been subjected to claims on a
7 weekly or a monthly basis?

8 A Yes, daily. Everything processed through
9 claims would be on a report.

10 Q Would that report indicate whether the
11 item was scanned or not?

12 A It would have to be scanned to be on the
13 report.

14 Q So, if there are other times that a
15 nicotine product, for example, was thrown in the
16 trash, there might not be a report of it?

17 A If someone just threw anything in the
18 trash, I mean, unless we saw it or someone saw it, I
19 mean, we wouldn't know with any product.

20 Q What was your conversation with Jason
21 Konwissarz regarding the termination of Joseph Biasi?

22 A I don't believe I had a conversation with
23 Jason.

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(Ryan Dunphy)

1 Q You had mentioned that you had made a
2 determination that this was a serious enough
3 infraction resulting in a termination; correct?

4 A Yes.

5 Q All right. And it looks like Jason and
6 Thomas Boolukos are the ones who actually had the
7 exit interview with Joseph Biasi; correct?

8 A Yes.

9 Q Did you have any interaction with either
10 of those two gentlemen prior to Mr. Biasi being
11 informed of his termination?

12 A Not that I can remember specifically.

13 Q Would it be typical for managers that are
14 under you to handle the exit interview?

15 A Assistant managers would normally handle
16 the exit interview to give the associate the
17 opportunity to open door.

18 Q And the open door is with you?

19 A The open door can be with anybody.

20 Q And the open door is some type of policy
21 where if you have concerns or disagree with the
22 termination, you can talk to somebody about it?

23 A Yes, you can.

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(Ryan Dunphy)

1 Q All right. And Mr. Biasi, in fact, did
2 that; right?

3 A He -- yes. He set up a time and came in
4 and talked to me, and anything past that I would not
5 know about because he would have the opportunity to
6 talk to anyone above me as well.

7 Q Did Mr. Biasi talk to you in the open door
8 meeting about the fact that he felt it was unfair
9 that he was terminated?

10 A He said it was unfair, yes.

11 Q What was the reason he gave?

12 A He really didn't give a reason. He just
13 didn't think it was fair.

14 Q You stated earlier, I believe, that he
15 brought up that he thought it was related to the
16 fact that he made a sexual harassment complaint?

17 A That was after his initial -- when he
18 initially came in, he didn't think it was fair that
19 he was terminated for the environmental infraction.
20 When he didn't get the answer that he was looking
21 for, then he brought that up and said that he
22 thought it was because of that, and that was not
23 true.

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(Ryan Dunphy)

1 Q And you explained that to him in the open
2 door policy meeting?

3 A I said that was not true.

4 Q What did you do, if anything, to
5 investigate the concern raised by Joseph Biasi that
6 he was terminated because he reported sexual
7 harassment?

8 A What do you mean? Like beyond the
9 investigations that are here?

10 Q Well, as a manager, is it your
11 understanding that if retaliation is reported to
12 you, that you have some type of duty under the
13 Wal-Mart policy to report that?

14 A Yeah, I would look into it, but the
15 infractions are completely separate. The asset
16 protection manager, Gwen, was involved in the
17 hazardous waste disposal and she would have nothing
18 to do with the other part.

19 Q But you, as a manager -- Joseph Biasi
20 raises a concern that he believes he was fired for
21 reporting sexual harassment. What, if anything, did
22 you do to advise people in ethics or your superiors
23 that that allegation had been made?

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(Ryan Dunphy)

1 A We had conversations, I believe, but I
2 didn't feel anything came up that would justify
3 that.

4 Q Did you do an investigation?

5 A What's here is the only investigations I
6 did, formal investigations.

7 Q And you're pointing to Exhibits A and B;
8 correct?

9 A I believe the one that I did is not in
10 either of these exhibits when I closed out the
11 investigation?

12 Q Anything else that you recall about steps
13 that you took after Joseph Biasi reported a concern
14 about retaliation?

15 A I can't recall anything specific.

16 (Plaintiff's Exhibit G was marked for
17 identification.)

18 | BY MR. FITNN:

19 Q I'm showing you what has been marked as
20 Exhibit G, which is Defendant's Objections and
21 Responses to Plaintiff's First Request for
22 Interrogatories and Documents.

23 MS. MOORE: There's no verification on

(Ryan Dunphy)

1 this. Did you get the --

2 MR. FINN: I don't believe so.

3 MS. MOORE: You don't believe so?

4 MR. FINN: I don't believe so.

5 MS. MOORE: Okay. I just wanted to make
6 sure.

7 MR. FINN: Off the record.

8 (Following a discussion off the record a
9 brief recess was taken.)

10 MR. FINN: We're back on the record.

11 We have added the verification to Exhibit
12 G just for clarity purposes.

13 BY MR. FINN:

14 Q If we look at that last page there, Mr.
15 Dunphy, is that your signature?

16 A Yes, it is.

17 Q And you reviewed these responses before
18 you verified them?

19 A Yes.

20 Q In the response to Number 6, the question
21 had asked for all individuals who participated in
22 the decision to terminate Plaintiff's employment.

23 A Okay.

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(Ryan Dunphy)

1 Q The response directs us to certain
2 personnel records, and I think several of which we
3 have discussed, but from your recollection and your
4 memory, what other individuals other than yourself
5 were involved in the termination of Joseph Biasi?

6 A What do you mean "involved"? Involved in
7 the investigation that led to it or involved in the
8 execution of the termination?

9 Q So, specifically, with regard to
10 Interrogatory Number 6, "Individuals who
11 participated in the decision to terminate
12 Plaintiff's employment."

13 A That would be myself, Rebecca and Gwen.

14 Q And other than what you've testified to
15 already, any other reasons that you believe
16 Mr. Biasi was terminated?

17 A No. He was only terminated for that
18 infraction.

19 Q If we look at Number 11, this question
20 asked about any potential admissions by Mr. Biasi,
21 and in the response it says, "After some objections,
22 Plaintiff admitted to improperly disposing of a
23 nicotine product."

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(Ryan Dunphy)

1 Do you see that?

2 A Where is it?

3 Q It's Number 11.

4 A So, what am I looking for here?

5 Q After the objections it says, "Subject to
6 and without waiving the foregoing objections,
7 Plaintiff admitted to improperly disposing of a
8 nicotine product."

9 A Okay.

10 Q Do you see that?

11 A Yes.

12 Q And you agree with that statement?

13 A Yes. I believe he admitted to it during
14 his deposition as well.

15 Q Other than what you heard at the
16 deposition, what other times did you hear Mr. Biasi
17 admit to improperly disposing of a nicotine product?

18 A During the open door conversation he had
19 with me, he admitted to doing it.

20 Q Admitted to throwing the nicotine patch
21 away?

22 A Correct.

23 Q Did he admit to a violation of Wal-Mart

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(Ryan Dunphy)

1 policy?

2 A He didn't use those specific words, but he
3 knew about the policy, he knew where to get the
4 policy and he threw away the product.

5 Q Do you know of any other times that Mr.
6 Biasi admitted to improperly disposing of a nicotine
7 product?

8 A This specific one or a different nicotine
9 product? Do you mean any other time he admitted to
10 this or any other time --

11 Q This particular incident.

12 A I believe he admitted to throwing it away
13 during his deposition, during his open door with me.
14 I don't know if he -- what the conversation was
15 between him and Jason during his exit interview or
16 any other conversations that he might have had.

17 Q Number 15. Number 15 asks about any other
18 Wal-Mart employees who have been disciplined for
19 throwing away nicotine products into a garbage can.
20 The response -- there are some objections and it
21 states that, "With regard to the Amsterdam Wal-Mart
22 since January of 2013, none."

23 A Okay.

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(Ryan Dunphy)

1 Q Do you have any knowledge like in the
2 Amsterdam store before January of 2013 if anyone had
3 ever been disciplined for throwing away nicotine
4 products into a garbage can?

5 A Nothing that I can think of.

6 Q In all of the various Wal-Marts that
7 you've worked at do you have knowledge of any
8 individual ever being disciplined for throwing a
9 nicotine product into a trash can?

10 A Not that I can specifically think of, no.

11 Q Does Earlene Schaeffer still work for
12 Wal-Mart?

13 A I don't believe so.

14 Q Was she terminated?

15 A I don't know. I wasn't in the store.

16 Q What have you heard about the
17 circumstances surrounding her departure?

18 A None.

19 Q How did you find out that Earlene
20 Schaeffer is not with the store?

21 A I believe through --

22 Q Other than through your lawyer.

23 A None. That was it.

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(Ryan Dunphy)

1 Q I'm not supposed to ask you about that, so
2 I apologize. I wasn't trying to dig.

3 Was Earlene Schaeffer friends with Rebecca
4 Paukstela?

5 A I don't believe so.

6 Q Were you friends with Earlene Schaeffer?

7 A No.

8 Q Was Earlene Schaeffer a good supervisor?

9 A She was -- she was good, standard -- solid
10 performer.

11 Q Do you have any recollection of prior
12 personnel complaints made against Earlene Schaeffer?

13 A Nothing I can think of specifically.

14 Q Do you recall any prior coaching with
15 regard to Earlene Schaeffer involving poor attitude?

16 A I can't think of anything specifically.

17 Q Do you think Earlene Schaeffer had a poor
18 attitude?

19 A No.

20 Q So, when Joseph Biasi brings a concern
21 that she is being very critical of him after he
22 reported sexual harassment, did that impact your
23 decision whether you should investigate his claims?

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(Ryan Dunphy)

1 A I believe that he was complaining just
2 because Earlene Schaeffer was pushing them to get
3 their job done. Earlene took over the unloader
4 supervisor position and was pushing these guys to
5 work harder to get the results that were required.

6 Q Do you recall ever telling anyone that you
7 were upset that Joseph Biasi went to corporate to
8 make a complaint because he wasn't getting anywhere
9 at the store level?

10 A No.

11 Q I'm going to move to the second claim
12 that's alleged in our Second Amended Complaint. It
13 involves uniforms. Are you aware of that
14 allegation?

15 A I am aware of it.

16 Q What is your understanding of the
17 allegation?

18 A That -- what they're accusing us of, not
19 providing a service or something for the vests, for
20 the vests specifically.

21 MR. FINN: Let's mark a few documents for
22 us to go through.

23 (Plaintiff's Exhibits H and I were marked

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1 for identification, respectively.)

2 BY MR. FINN:

3 Q I'm showing you what has been marked as
4 Exhibit H. What is this document, if you know?

5 A This is Dress Code Guidelines for Wal-Mart
6 Stores Field Hourly for New York.

7 Q This has an effective date of September
8 29, 2014?

9 A Yes.

10 Q Is this the dress code that was in place
11 from September 29, 2014 through the present day?

12 A As far as I know, yes.

13 Q If we move to Page 451, it says,
14 "laundering uniforms." It says, "A uniform is an
15 item of clothing issued by the company to an
16 associate required to be worn during working hours
17 and that cannot be worn outside of work."

18 Do you believe the vest is a uniform?

19 A No, it's just a vest.

20 Q So, you don't believe it's a uniform under
21 the uniform policy?

22 MS. MOORE: Object to the question.

23 A I guess I'm not understanding the

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1 question.

2 It's company-issued clothing that -- yeah,
3 I guess it is. I mean you would wear it during work
4 but you don't wear it outside.

5 Q What is your understanding of the policy
6 in September of 2014 as far as the uniforms provided
7 to an associate like Joseph Biasi?

8 A My understanding of the vests?

9 Q Yes.

10 A That we issued vests for them to wear
11 while they work.

12 Q And how many vests did you issue?

13 A Initially, it was two per person if you
14 were full-time.

15 Q And one if you were part-time?

16 A I don't remember specifically but I think
17 so. I think it went based off of your average
18 hours.

19 (Plaintiff's Exhibit J was marked for
20 identification.)

21 BY MR. FINN:

22 Q I show you what's been marked as Exhibit
23 J. This Dress Code Policy Associate Uniform Chart,

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(Ryan Dunphy)

1 District of Columbia and New York has an effective
2 date of September 29, 2014; correct?

3 A Yes.

4 Q And "all associates except as listed
5 below" -- it says, "Blue vest, two FT, one PT."

6 Is that two full-time and one part-time?

7 A Yes, it is.

8 Q Does that refresh your recollection as to
9 how many vests a part-timer got?

10 A It does.

11 Q How many?

12 A A part-time associate received one vest
13 initially.

14 Q And underneath the "all associates"
15 position it says, "TLE." What does TLE stand for?

16 A Tire lube express.

17 Q And there seems to be asterisk for that
18 particular item, and it says, "The number of issued
19 TLE uniforms may vary based on full-time or
20 part-time status"?

21 A That is what it says.

22 Q Under the policy it says that, "The
23 cleaning process used for the blue vest is a uniform

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(Ryan Dunphy)

1 service."

2 Do you see that?

3 A Where is it? Oh, yes, I see it.

4 Q In September of 2014 did the Amsterdam
5 Wal-Mart use a cleaning service to wash the vests?

6 A We've had a contract with Aramark, who
7 does all of our clothing washing.

8 Q And specifically with regard to the blue
9 vests that are given to all associates, Aramark
10 laundered those on a weekly basis?

11 A That was available but there was no demand
12 for it. No one turned in their vest to be washed.

13 Q Not a single person?

14 A If anyone did, the personnel manager, I
15 believe, washed it herself, but I don't know. I
16 can't tell you how many, if any.

17 Q What, if anything, did you do to advise
18 employees that they could have their vests washed on
19 a weekly basis?

20 A When we first received the vests and
21 implemented this, the vest dress code, to receive
22 the vest they had to go see our personal manager,
23 Desiree. She would hand out the vest and go over

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1 the new dress code policy.

2 Q And it's your understanding that Desiree
3 specifically advised each individual that they could
4 get their vest washed free of charge?

5 A Yeah, she covered it. I'm pretty sure.

6 Q How do you know she covered it?

7 A I wasn't there for every single
8 conversation but she was pretty good, and she --
9 they had to see her before they could get their
10 vest. No one could get a vest without seeing her
11 first.

12 Q And with regard to -- you said you weren't
13 there for every conversation. Were you there for a
14 single conversation where she said, "You can get
15 your blue vest laundered"?

16 A I can't remember any of them.

17 Q Do you know whether any individual
18 employees at the Amsterdam store were advised in
19 writing about the availability of their vest being
20 laundered for them?

21 A I believe it's written on the policy and
22 posted. I know everything about it was posted on
23 the personnel board, but I can't think of it

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1 specifically.

2 Q Do you know if there was any specific memo
3 that was given to employees that stated, "Your blue
4 vest can be laundered by a laundry service"?

5 A A memo sent out to all employees? Not
6 that I can think of.

7 Q On the document you're looking at, Page
8 419, it says, "Fresh areas, food service." Who is
9 covered under that division or position?

10 A That would be all fresh area associates,
11 so, meat, produce, deli, bakery.

12 Q And the garment listed there is an apron
13 and a coat?

14 A Correct.

15 Q Are those items laundered?

16 A They are.

17 Q And that was something that there was
18 demand for and was done in the store?

19 A Yes.

20 Q Do the fresh area food service associates
21 also wear a blue vest over top of their apron and
22 coat?

23 A No.

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(Ryan Dunphy)

1 Q Is that --

2 A Underneath their apron or coat.

3 Q Underneath?

4 A Yes.

5 Q So, they do have a blue vest that they
6 wear every day?

7 A Yes.

8 MS. MOORE: Objection.

9 A They should have one, yes.

10 BY MR. FINN:

11 Q And the fresh area food service workers,
12 they likewise, even though they had their apron and
13 coat laundered for them, as far as you know none of
14 those associates had their vests laundered for them?15 A I can't -- I don't know any specific
16 person that did it but it was available.17 Q And the basis you have for saying that
18 employees were notified of this is Desiree?

19 A Yes.

20 Q Anyone else?

21 A The management team would know but Desiree
22 would be the best resource.

23 Q At any point in time from September 29,

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1 2014 to the present date, has the process at all
2 changed as far as washing these vests in the
3 Amsterdam store?

4 A I couldn't speak to anything in the
5 Amsterdam store after July of 2015.

6 Q There was some testimony by Mr. Biasi that
7 his father at some point in time had asked for a new
8 vest or gotten a clean vest. Do you know how that
9 process occurred?

10 A I believe he said his father used the
11 laundry service where he turns it in and they would
12 launder it for him. So, he's one that used it. But
13 anyone who needed a new vest if it were to rip, tear
14 or stain, they would go see Des and Des would give
15 them a new vest.

16 Q To replace the old one?

17 A Yes.

18 Q Do you have personal knowledge of Mr.
19 Biasi's father ever turning in a uniform to the
20 laundry service?

21 A No.

22 Q Are you sure that he actually did that?

23 A Mr. Biasi -- Joseph was under oath when he

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1 said it, so, it must be true.

2 Q You believe everything that Joseph Biasi
3 says under oath is true?

4 A No.

5 Q If you look back at Exhibit H, under the
6 laundering uniforms section, which is on Page 451,
7 it states in the second paragraph, "If you are
8 required to wear a uniform during working hours, you
9 will be provided a uniform at the company's expense.
10 Uniforms will be issued in the quantity listed in
11 the Associate Uniform Chart based on the associate's
12 division and position. You are expected to keep
13 uniforms neat and clean."

14 Do you see that?

15 A Yes.

16 Q Was that policy followed by Wal-Mart in
17 the Amsterdam store?

18 A As far as did we make sure they had a
19 clean vest?

20 Q Yes.

21 A Yes, we followed the policy and we provide
22 the service.

23 Q And it says here, "You are expected to

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(Ryan Dunphy)

1 keep uniforms neat and clean." Isn't that a
2 direction to employees that they have to clean their
3 own uniform?

4 MS. MOORE: Objection.

5 A No. We offered a service, so, I mean,
6 they can -- they could clean it themselves if they
7 would like or they could use the service that we
8 provide if they would like. The option is theirs.

9 BY MR. FINN:

10 Q In this laundering uniform section,
11 wouldn't you agree that it doesn't actually say that
12 they can have their laundry laundered for them?

13 MS. MOORE: Objection.

14 A In this paragraph?

15 BY MR. FINN:

16 Q Yes, correct.

17 MS. MOORE: Objection.

18 A What was the question again?

19 BY MR. FINN:

20 Q In this section, "Laundering Uniforms,"
21 where does it say that an associate like Joseph
22 Biasi can turn in his uniform, specifically the
23 vest, and have it laundered?

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1 A Isn't it right there in the bottom?

2 "The approved corporate linen supplier
3 provided laundering services for uniforms or wash
4 and wear items." Oh, it says, "of terminated
5 associates."

6 Q That paragraph there starts off with
7 "Special care items."

8 "Some items require special care, i.e.,
9 daily washing, ironing, dry cleaning, extra laundry
10 loads due to bulkiness of heavy, soiling. A
11 laundering service is provided for these special
12 care items and they are laundered at the company's
13 expense. You are encouraged to use the company's
14 laundering service for all such items."

15 Is the blue vest a special care item?

16 A I don't know how it's defined but it says
17 "daily" or "daily washing items," so, if someone
18 were to want to wear it daily and they wanted it
19 washed, they could get it washed.

20 Q Is there any other -- you had mentioned
21 that there was something in writing to associates to
22 advise them of the availability of laundering
23 services. Is this the document that you were

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1 referring to?

2 A That I'm not sure of. I don't know which
3 document was posted. I assume it's this one unless
4 there's another one.

5 Q Those bullet points -- they fall under the
6 sentence, "TLE associates must turn in uniform
7 rental parts, jackets, shirts and shorts on a weekly
8 basis for laundry service;" isn't that correct?

9 MS. MOORE: Objection.

10 A That line is in this definition of
11 laundering uniforms.

12 BY MR. FINN:

13 Q So, the section about the laundry
14 service -- is it applicable only to TLE associates?

15 MS. MOORE: Objection.

16 A Our laundry service is available for
17 everybody.

18 BY MR. FINN:

19 Q Where does it say that in this document?

20 A That laundry service is available for
21 everybody?

22 Q Yes.

23 A It doesn't state it in those words.

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1 That's how I interpret it.

2 Q It says, "Questions about setting up the
3 laundry service should be directed to your store
4 manager."

5 Did anyone direct any questions to you
6 about setting up laundry service for washing the
7 blue vests?

8 A Nobody ever asked me to have their vest
9 washed while I was there. The only question I was
10 ever asked was by my personnel manager of which day
11 we would like them to pick up the vests for the
12 service.

13 Q The vests specifically?

14 A Yes.

15 Q Who talked to you about that?

16 A Des.

17 Q And what day was set up?

18 A Wednesday.

19 Q And that was from September of 2014 to the
20 time you left the store?

21 A I don't remember which day she initiated
22 it.

23 Q Did the laundry service pick up any other

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1 items on Wednesday?

2 A I'm not sure which ones, but they -- I'm
3 not sure.

4 Q Were there any emails or written
5 communications with regard to the conversations or
6 communications about Wednesday being the day for the
7 blue vest pick-up?

8 A No.

9 Q It was just a couple oral conversation?

10 A Yes.

11 Q Did you advise the employees at the
12 Amsterdam Wal-Mart store in writing that Wednesday
13 was the date for them to drop off blue vests for
14 laundry service?

15 A No, they could drop them off any day and
16 we would just give them a new one and then launder
17 that one.

18 Q Are employees required to have clean
19 uniforms?

20 A Yes, they are required to follow the dress
21 code, to be clean.

22 Q Is that particularly important for the
23 employees working in the area serving food?

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(Ryan Dunphy)

1 A It's important for all associates.

2 Q Did you consider the vest a wash and wear
3 item?

4 A Define that for me.

5 Q Well, under this laundering uniform
6 section, it says, "Wash and wear items: The
7 approved corporate linen supplier will launder wash
8 and wear items for you at the company's expense."

9 Did that include the vests?

10 A As a wash and wear item? I don't know.

11 MS. MOORE: I'm going to object to the
12 question.

13 BY MR. FINN:

14 Q Let's direct your attention back to J,
15 Exhibit J. If we look at Page 419, there appears to
16 be a number of items that in the cleaning process
17 column it's identified as a wash and wear item,
18 including a green smock, for example, for Wal-Mart
19 To Go employees, a green smock for pharmacy
20 technician and pharmacy cashiers at neighborhood
21 markets and at Sam's Club, the demo team apron, the
22 sales associate vest, the pharmacy lab coat, the
23 photo lab coat and the vision center. Do you see

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1 that?

2 A I see it.

3 Q But the blue vest for all associates at
4 the Wal-Mart store -- it's identified not as a wash
5 and wear item but as a uniform service; isn't that
6 correct?

7 MS. MOORE: Objection.

8 A Under "cleaning process" it says, "uniform
9 service."

10 BY MR. FINN:

11 Q Where those other items I just talked
12 about indicated wash and wear items; correct?13 A I believe that -- well, it says "wash and
14 wear" under those items, so the blue vests could be
15 a wash and wear item but still the uniform service
16 is provided if they want it, so...17 Q The store you're at now in Glenville --
18 are you following the same general process for the
19 blue vests as far as laundering them?20 A Yeah, I don't have as much involvement or
21 oversee it but I do believe it's set up, yes.22 Q Do you know if anyone at the Glenville
23 store gets their blue vest laundered?SUSAN FLORIO, RPR
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1 A I don't know any specific person who does
2 it.

3 Q Do you know specifically if anyone at the
4 Greenville store has been advised in writing of the
5 availability to have their blue vest laundered?

6 A That I don't know.

7 Q How many employees work for the Greenville
8 store?

9 A Approximately, three hundred and sixty,
10 give or take.

11 Q How many employees worked at the Amsterdam
12 store?

13 A Two hundred and eighty.

14 Q So, the Greenville store is a little bit
15 larger?

16 A Yes, quite a bit larger.

17 Q Is there a deli and bakery area at the
18 Greenville store?

19 A Yes.

20 Q How many people work in the bakery section
21 of the Greenville store?

22 A About ten.

23 Q And how about at the Amsterdam store?

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(Ryan Dunphy)

1 A For now or back when I was there?

2 Q Back when you were there.

3 A Back when I was there, probably six to
4 eight maybe.

5 Q If Cynthia Mecca -- does that name ring a
6 bell for you?

7 A Yes, it does.

8 Q She worked at the Amsterdam Wal-Mart?

9 A Yes, she did.

10 Q What is her position?

11 A When I was there, she was deli department
12 manager.

13 Q If Cynthia Mecca were to state that she
14 oversees approximately fifteen employees at the
15 Amsterdam Wal-Mart, would you disagree with that?

16 A No, I would not disagree with that.

17 Q Before you said there was about six to
18 eight.

19 A That was bakery.

20 Q So, deli and bakery --

21 A Deli is bigger. Deli is much bigger than
22 bakery.

23 Q All right. At the Wal-Mart is it always

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(Ryan Dunphy)

1 broken down between deli and bakery separate or is
2 it sometimes referred to as "deli/bakery"?

3 A In any store I've been in deli and bakery
4 are separate.

5 Q In the bakery they cook cakes and cookies
6 and bread items; correct?

7 A Yes. They bake bread and mostly defrost
8 everything out of the freezer. That's about it.

9 Q And then it's available for purchase in
10 the store?

11 A Yes.

12 Q And in the deli section they're preparing
13 food to be served to customers; correct?

14 MS. MOORE: Objection.

15 A No, they prepare food to be purchased by
16 customers. So, when we prepare the food -- we hand
17 it to them -- they still have to go through the
18 registers and purchase it just like any other
19 grocery item.

20 BY MR. FINN:

21 Q But my understanding is that there are
22 items, you know, such as chicken, chicken tenders,
23 macaroni and cheese, items that are prepared on site

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(Ryan Dunphy)

1 and then sold to customers?

2 A We will prepare hot plates, anything they
3 want, we package them, and then they still have to
4 go through the register and purchase them.

5 Q But those items that are prepared are
6 prepared in the store; correct?

7 A Define "prepared." We cook them and then
8 we put them in a container and then they take them.

9 Q And when the customer comes up to order
10 the food, there's a menu and there's items in front
11 of them that they can see that are in separate
12 containers that get scooped out and things like
13 that?

14 A The items are there in the hot case and
15 it's labeled just like any of our other modulars,
16 so, it would item with the price and the description
17 of the item.

18 Q If you can recall, what are some of the
19 items that were available at the Amsterdam deli?

20 A Macaroni and cheese, I think, mashed
21 potatoes, chicken tenders, chicken wings --
22 sometimes we would get fish -- popcorn shrimp,
23 popcorn chicken, rotisserie chicken, 8-piece fried

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(Ryan Dunphy)

1 chicken, General Tso's chicken.

2 Q Were there beverages for sale in that area
3 as well?

4 A There was sodas and iced teas that were in
5 the bunker, like a 20-ounce Pepsi or whatever.

6 Q Was there an area in the Amsterdam store
7 where customers could eat in the store?

8 A No.

9 Q So, it's all to go items?

10 A Correct.

11 Q Is there a fountain soda available to
12 customers in the store?

13 A No.

14 Q Is there coffee or tea that is served hot
15 in the store?

16 A No.

17 Q And with regard to the Glenville store is
18 it a similar type of food items?

19 A Yes, the same items.

20 Q How many deli associates do you believe
21 worked in the Amsterdam store when you worked there?

22 A Probably about fifteen.

23 Q And how about in the Glenville store where

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1 you currently work?

2 A It's probably more like twenty.

3 Q Any other areas in the Wal-Mart store

4 where food is prepared?

5 A Define "prepared."

6 Q Well, I understand there's areas in most
7 of the Wal-Marts now that there's like grocery
8 items; correct?

9 A Well, we have grocery.

10 Q So, people can go and, for example, just
11 get a box which has a frozen pizza inside and they
12 would go to the register and they pay for it?

13 A Yes.

14 Q I'm talking about any other areas in the
15 Wal-Mart, the Amsterdam Wal-Mart in particular,
16 where a Wal-Mart employee would take some type of
17 food out of a package that comes in and do something
18 with it, like heat it up for sale or re-package it.
19 Any other employees in the store that handle food in
20 that way?

21 MS. MOORE: Other than the --

22 MR. FINN: Deli and bakery.

23 A Handle -- I guess I'm confused on what you

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(Ryan Dunphy)

1 mean. Like do people stock the shelves? Yes.

2 BY MR. FINN:

3 Q All right. And when they're stocking
4 shelves, my understanding is they are stocking
5 shelves for products that come in a can, come in a
6 box, come in a container; correct?

7 A Yes.

8 Q Any other areas where, like, for example,
9 the butcher area, do people process meat?

10 A We don't have a butcher, no.

11 Q There is no butcher at all?

12 A No.

13 Q You sell meat in your stores; correct?

14 A Yes.

15 Q So, that meat comes in pre-packaged?

16 A Pre-packaged.

17 Q Do any of the associates un-package or
18 re-package meat?

19 A No. It comes in all pre-packaged. I
20 mean, we just thaw it out and throw it on the shelf.

21 Q And to the extent there are, for example,
22 expiration dates or sell by dates those come
23 pre-done?

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(Ryan Dunphy)

1 A No. Once it's unfrozen, then it has a
2 shelf life and it needs to be scanned through the
3 handheld and that would tell you the shelf life.
4 You print the tag, you put it on the meat and put
5 the meat on the shelf.

6 Q In that process does meat ever get
7 un-packaged and re-packaged?

8 A No. Like -- no.

9 Q Any other areas of the Wal-Mart store
10 where individuals are involved in preparing or
11 serving food that is heated up or changed from its
12 original packaging?

13 MS. MOORE: Objection.

14 A No, I don't think so.

15 BY MR. FINN:

16 Q The Amsterdam Wal-Mart has, I believe, a
17 Subway in it?

18 A Yes, it does.

19 Q Those employees inside the Subway -- who
20 do they work for?

21 A The owner of the Subway.

22 Q Nothing to do with Wal-Mart?

23 A No, they're just a tenant.

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(Ryan Dunphy)

1 Q As far as you know, is that the way all
2 the Wal-Marts are set up? They lease space
3 essentially to different food places?

4 A Yes, as far as I know. I mean, it might
5 be different outside of New York. I have only
6 worked in New York stores but...

7 Q Do you know whether Wal-Mart keeps any
8 records to show how many uniforms are actually given
9 to a particular employee?

10 A I don't know. I don't know how they track
11 that.

12 Q You, as a manager in the Amsterdam store,
13 did you ever keep any records to show how many vests
14 were given to any particular employee?

15 A No.

16 Q Do you know whether Wal-Mart as a company
17 keeps records to show which uniforms it maintains on
18 behalf of employees?

19 A What do you mean? Like launders or --

20 Q Yes, correct.

21 A Does it keep a record of it?

22 Q Correct.

23 A I don't know.

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(Ryan Dunphy)

1 Q With regard to the Amsterdam store and as
2 a store manager, did your store maintain any records
3 of which employee was having their uniform laundered
4 on any given week, month or any other time period?

5 A No.

6 Q As far as you know, the Wal-Mart dress
7 code and the uniform policy -- that was something
8 that was implemented for the entire State of New
9 York; isn't that correct?

10 A The vests coming back was announced at a
11 year beginning meeting, which all of the store
12 managers go to in Florida, and they announced to the
13 whole company that it was coming back.

14 Q Was that some time in September of 2014?

15 A No, they announced the vest was coming
16 back in February, and then they implemented it, I
17 guess, in September. I don't even remember the
18 exact date but they announced it, and then it took
19 quite a while for it to actually be implemented.

20 Q And at that meeting was that just for New
21 York managers or was that company-wide?

22 A Company-wide.

23 Q So, is it fair to say that this vest

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(Ryan Dunphy)

1 program is company-wide?

2 A Yeah. Every -- yeah, every store in the
3 company should be wearing a vest.

4 Q And every company in the store follows the
5 same policy with regard to giving two vests to
6 full-time and one to part-time?

7 A As far as I know unless there's state
8 restrictions or anything else. I can't speak to
9 that outside of New York.

10 Q Well, when you look at -- I apologize. I
11 don't remember the number -- Exhibit J, it appears
12 that the dress code policy written here is the
13 Associate Uniform Chart for the District of Columbia
14 and New York; correct?

15 A Correct.

16 Q So, at least with regard to all the stores
17 in the State of New York full-time associates are
18 supposed to be given two vests and part-time
19 associates are supposed to be given one vest;
20 correct?

21 A That is what it says here, yes.

22 Q Do you know how many stores there are in
23 the State of New York?

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(Ryan Dunphy)

1 A I don't.

2 Q Do you have any good faith or belief of
3 how many stores there are in this state?

4 A Eighty.

5 Q How do you come up with that number?

6 A Our regional is responsible for eighty
7 stores and he has most of New York. He just doesn't
8 have the southern city stores.

9 Q So, how many employees for the entire
10 state would that be then?

11 A My guess would be 200,000 maybe? A
12 hundred thousand? I don't know. I don't know.

13 Q All right. That's fine.

14 Do you believe the proportion -- the
15 number of deli and bakery associates at the
16 Amsterdam store is consistent with the number of
17 deli and bakery associates at the Glenville store?

18 A When they -- I don't know what they have
19 there now, but when you were managing a business, we
20 have a system that says -- it's forecasted hours so,
21 if they forecast two hundred hours for your deli,
22 then you need to hire people to fill in those two
23 hundred hours. So, then your full-time/part-time

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(Ryan Dunphy)

1 ratio would play into how many people you would
2 have. If you had all full-time people, you would
3 have less people. If you had all part-time people,
4 you would have more people because they're working
5 less hours.

6 Q So, if there's eighty stores in the State
7 of New York and -- do you believe twenty-five
8 associates total for the deli and bakery would be a
9 good estimate of the number of employees in the
10 State of New York?

11 A Twenty-five per store?

12 Q Yes.

13 A Yes, that would be pretty close.

14 Q So, if I was to multiply eighty times
15 twenty-five, I get two thousand associates that work
16 in the deli area or bakery?

17 A Okay.

18 Q Is that consistent with what you would
19 have as an understanding as a manager?

20 A Yes.

21 Q And if the average store had maybe three
22 hundred employees total, eighty times three hundred
23 would be 24,000 employees in the State of New York.

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(Ryan Dunphy)

1 Would that be consistent with your recollection as a
2 manager of how many Wal-Mart employees there are in
3 the State of New York?

4 A Sure.

5 MR. FINN: Thank you for your time today,
6 sir. I'm done.

* * * *

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(Ryan Dunphy)

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34 FOR
5 PLAINTIFF

DESCRIPTION

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1
2 STATE OF NEW YORK)
3 COUNTY OF) ss:
4
5

6 I have read the foregoing record of my
7 testimony taken at the time and place noted in the
8 heading hereof, and I do hereby acknowledge it to be
9 a true and accurate transcript of same.

10

11

12

RYAN DUNPHY

13

14

Sworn to before me this

15

_____ day of _____ 2016.

16

17

Notary Public

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(Ryan Dunphy)

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6 C E R T I F I C A T I O N
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8

9 I, DOROTHEA MULLEN, a Shorthand Reporter
10 and Notary Public in and for the State of New York,
11 do hereby certify that the foregoing record taken by
12 me at the time and place as noted in the heading
13 hereof is a true and an accurate transcript of the
14 same, to the best of my ability and belief.
15

16 _____ Date _____ DOROTHEA MULLEN
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